

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**BIRDELL VASSEL, INDIVIDUALLY
AND THROUGH HER NEXT FRIEND,
JEFFREY VASSEL,**

PLAINTIFF,

VS.

CIVIL ACTION NO. 4:06CV28-P-B

MARINER HEALTHCARE, INC.,

DEFENDANT.

ORDER

These matters come before the court upon Defendant Mariner Healthcare, Inc.'s Motion to Dismiss [6-1] and Plaintiff's Motion to Remand [9-1]. After due consideration of the motions and the response filed thereto, the court finds as follows, to-wit:

The plaintiff, a Mississippi resident, filed the instant action on October 10, 2005 in the Circuit Court for Leflore County, Mississippi. The Complaint names two defendants: (1) Mariner Health Care, Inc. d/b/a Greenwood Health & Rehabilitation Center; and (2) Greenwood Health and Rehabilitation Center. Mariner is a foreign corporation. On February 9, 2006, Mariner removed this case to federal court arguing the presence of federal diversity jurisdiction because the purported Mississippi defendant, "Greenwood Health and Rehabilitation Center." is not a legal entity and is merely a trade name of Mariner.

It is undisputed that there is no such name listed on the Mississippi Secretary of State's corporation search website. Nor is it disputed that Greenwood Health and Rehabilitation Center is a trade name of a foreign corporation.

The court concludes that the plaintiff's motion to remand should be denied because of the presence of federal diversity jurisdiction – *i.e.*, complete diversity and an amount in controversy over

\$75,000. Accordingly, Mariner's motion to dismiss the plaintiff's claims against "Greenwood Health and Rehabilitation Center" should be granted because it is not a legal entity.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) Plaintiff's Motion to Remand [9-1] is **DENIED**; and

(2) Defendant Mariner Healthcare, Inc.'s Motion to Dismiss [6-1] is **GRANTED**; therefore,

(3) All of the plaintiff's claims against "Greenwood Health and Rehabilitation Center" are

DISMISSED WITH PREJUDICE for failure to state a claim upon which relief can be granted given that "Greenwood Health and Rehabilitation Center" is not a legal entity capable of being sued in the State of Mississippi.

SO ORDERED this the 11th day of July, A.D., 2006.

/s/ W. Allen Pepper, Jr. _____

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE